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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

ARMANDO BARBA, individually and on
behalf of all others similarly situated,

Plaintiff,
vs.

BOB BAKER VOLKSWAGEN, a California
Corporation; and DOES 1 through 50, inclusive,
Defendants.

Case No. 37-2020-00034251-CU-OE-CTL

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- (1) VIOLATION OF LABOR CODE §§
510, 558, 1194, and 1197.1;**
- (2) VIOLATION OF LABOR CODE
§226.7;**
- (3) VIOLATION OF LABOR CODE §
226;**
- (4) VIOLATION OF BUSINESS AND
PROFESSIONS CODE §17200, ET
SEQ.; AND**
- (5) VIOLATION OF LABOR CODE §
2698, ET SEQ**

DEMAND OVER \$25,000

1 Plaintiff Armando Barba (“Plaintiff”), hereby submits this Class Action Complaint against
2 Defendants Bob Baker Volkswagen (“Bob Baker” or “Defendant”), and Does 1-50 (hereinafter
3 collectively referred to as “Defendants”), as an individual and on behalf of the Class of all other
4 similarly situated current and former employees of Defendants for penalties and/or damages for failure
5 to pay all regular and overtime wages for hours worked, failure to provide meal periods and failure to
6 provide accurate itemized wage statements under California Labor Code statutes, restitution for unfair
7 business practices in violation of Business and Professions Code § 17200, *et seq.*, and violations of the
8 Private Attorneys General Act (the “PAGA”) as follows:

9 **INTRODUCTION**

10 1. This class action is within the Court’s jurisdiction under California Labor Code §§ 201-
11 204, 226, 226.7, 510, 1194, 1197, 1197.1, 2698, *et seq.* the California Industrial Welfare Commission’s
12 (“IWC”) Wage Orders, and the California Unfair Competition Law (the “UCL”), codified at California
13 Business and Professions Code § 17200, *et seq.*

14 2. This Complaint challenges systemic illegal employment practices resulting in violations
15 of the California Labor Code and Business and Professions Code against employees of Defendants.

16 3. Plaintiff is informed and believes and based thereon alleges that Defendants jointly and
17 severally have acted intentionally and with deliberate indifference and conscious disregard to the rights
18 of all employees by failing to pay regular and overtime wages for all hours worked, failing to provide
19 meal periods and failing to provide accurate wage statements.

20 4. Plaintiff is informed and believes and based thereon alleges that Defendants have
21 engaged in, among other things a system of willful violations of the California Labor Code, Business
22 and Professions Code and applicable IWC Wage Orders by creating and maintaining policies, practices
23 and customs that knowingly deny employees the above stated rights and benefits.

24 5. The policies, practices and customs of defendants described above and below have
25 resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that
26 routinely adhere to the strictures of the California Labor Code and the California Business and
27 Professions Code.

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1 **JURISDICTION AND VENUE**

2 6. The Court has jurisdiction over the violations of the California Labor Code §§ 201-204,
3 226, 226.7, 510, 1194, 1197, 1197.1, 2698, *et seq.* and the UCL.

4 7. Venue is proper in San Diego County because Defendant does business in this County
5 and Defendant has employees working in this County.

6 **PARTIES**

7 8. In or around March 2020, Plaintiff began working for Defendants as an hourly, non-
8 exempt mechanic. On or about July 22, 2020, Plaintiff's employment ended. Plaintiff was and is the
9 victim of the policies, practices, and customs of Defendants complained of in this action in ways that
10 have deprived him of the rights guaranteed by California Labor Code §§ 201-204, 226, 226.7, 510,
11 1194, 1197, 1197.1, 2698, *et seq.* and the applicable IWC Wage Orders, and the UCL.

12 9. Plaintiff is informed and believes and based thereon alleges that Defendant was and is a
13 California corporation doing business in the State of California providing selling vehicles and
14 mechanical services. Plaintiff is informed and believes and based thereon alleges that Defendant
15 maintains its headquarters at 5500 Paseo Del Norte, Carlsbad, CA 92008.

16 10. Plaintiff is informed and believes and based thereon alleges that at all times herein
17 mentioned Defendant and DOES 1 through 50 are and were business entities, individuals, and
18 partnerships, licensed to do business and actually doing business in the State of California.

19 11. As such, and based upon all the facts and circumstances incident to Defendants' business
20 in California, Defendants are subject to California Labor Code §§ 201-204, 226, 226.7, 510, 1194, 1197,
21 1197.1, 2698, *et seq.*, the IWC Wage Orders and the UCL.

22 12. Plaintiff does not know the true names or capacities, whether individual, partner or
23 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said
24 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint
25 when the true names and capacities are known. Plaintiff is informed and believes and based thereon
26 alleges that each of said fictitious Defendants were responsible in some way for the matters alleged
27 herein and proximately caused Plaintiff and members of the general public and class to be subject to the
28 illegal employment practices, wrongs and injuries complained of herein.

13. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

14. Plaintiff is informed and believes and based thereon alleges that at all times material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of, or working in concert with each of the other co-defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

15. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

16. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

CLASS ACTION ALLEGATIONS

17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to California Code of Civil Procedure § 382, of a class of all current and former non-exempt employees who worked for Defendants at any time during the period of time from April 6, 2016, through the present, in the State of California (the “Class”). Plaintiff also proposes the following subclass:

a. All current and former non-exempt employees who worked for Defendants at any time during the period of time from April 6, 2016, through the present, in the

1 State of California who worked more than 5 hours in any work shift (the “MEAL
2 BREAK CLASS”).

3 18. **Numerosity and Ascertainability:** The members of the Class are so numerous that
4 joinder of all members would be impractical, if not impossible. The identity of the members of the
5 Class is readily ascertainable by review of Defendants records, including payroll records. Plaintiff
6 alleges that Defendants: (a) failed to provide accurate, itemized wage statements in violation of Labor
7 Code § 226; (b) failed to pay overtime for all hours worked, including without limitation, time that class
8 members spent prior to clocking in for their shift in violation of Labor Code §§ 510, 558, 1194, and
9 1197.1; (c) failed to pay regular wages for all hours worked, including without limitation, time that class
10 members spent prior to clocking in for their shift in violation of Labor Code §§ 558, 1194, 1197, and
11 1197.1; (d) failed to pay all wages owed to separated employees by issuing payment of final wages to
12 separated employees in violation of Labor Code §§ 201-203; and (e) engaged in Unfair Business
13 Practices in violation of the UCL, the California Labor Code, including without limitation, California
14 Labor Code §§ 510, 1194, 1197, and 1197.1, and the applicable IWC Wage Orders.

15 19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
16 necessary steps to represent fairly and adequately the interests of the class defined above. Plaintiff’s
17 attorneys are ready, willing and able to fully and adequately represent the class and individual Plaintiff.
18 Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in the past and currently
19 have a number of wage-and-hour class actions pending in California courts.

20 20. Defendants uniformly administered a corporate policy, practice that: (a) failed to provide
21 accurate, itemized wage statements in violation of Labor Code § 226; (b) failed to pay overtime for all
22 hours worked, including without limitation, time that class members spent prior to clocking in for their
23 shift in violation of Labor Code §§ 510, 558, 1194, and 1197.1; (c) failed to pay regular wages for all
24 hours worked, including without limitation, time that class members spent prior to clocking in for their
25 shift in violation of Labor Code §§ 558, 1194, 1197, and 1197.1; (d) failed to pay all wages owed to
26 separated employees by issuing payment of final wages to separated employees in violation of Labor
27 Code §§ 201-203; and (e) engaged in Unfair Business Practices in violation of the UCL, the California
28 Labor Code, including without limitation, California Labor Code §§ 510, 1194, 1197, and 1197.1, and

the applicable IWC Wage Orders.

21. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning Defendants that: (a) failed to provide accurate, itemized wage statements in violation of Labor Code § 226; (b) failed to pay overtime for all hours worked, including without limitation, time that class members spent prior to clocking in for their shift in violation of Labor Code §§ 510, 558, 1194, and 1197.1; (c) failed to pay regular wages for all hours worked, including without limitation, time that class members spent prior to clocking in for their shift in violation of Labor Code §§ 558, 1194, 1197, and 1197.1; (d) failed to pay all wages owed to separated employees by issuing payment of final wages to separated employees in violation of Labor Code §§ 201-203; and (e) engaged in Unfair Business Practices in violation of the UCL, the California Labor Code, including without limitation, California Labor Code §§ 510, 1194, 1197, and 1197.1, and the applicable IWC Wage Orders.

22. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical manner as the Class members. Plaintiff was not provided proper and accurate itemized wage statements identifying all hours worked and payment for all regular and overtime wages. Plaintiff was required to work prior to clocking in for his shift. More specifically, Plaintiff was required to drive the car that he would be serving to the garage and prepare his tools before he clocked in for his shift. As a result, Plaintiff was not paid all applicable overtime and regular wages spent prior to clocking in for his shift. Further, Plaintiff was routinely provided with meal breaks after his 5th hour of work, which entitled him to one additional hour of pay. However, Defendant failed to pay Plaintiff the extra hour of pay when he was not provided with a meal break within the first 5 hours of work. As such, Plaintiff is a member of the Class and has suffered the alleged violations of California Labor Code §§ 201-204, 226, 226.7, 510, 1194, 1197, 1197.1, the applicable IWC Wage Orders and the UCL.

23. The California Labor Code and upon which Plaintiff bases these claims is broadly remedial in nature. These laws and labor standards serve an important public interest in establishing regular working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who may seek to take advantage of superior

1 economic and bargaining power in setting onerous terms and conditions of employment.

2 24. The nature of this action and the format of laws available to Plaintiff and members of the
3 Class identified herein make the class action format a particularly efficient and appropriate procedure to
4 redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the
5 corporate Defendant would necessarily gain an unconscionable advantage since it would be able to
6 exploit and overwhelm the limited resources of each individual Plaintiff with Defendant's vastly
7 superior financial and legal resources. Requiring each Class member to pursue an individual remedy
8 would also discourage the assertion of lawful claims by employees who would be disinclined to file an
9 action against their former and/or current employer for real and justifiable fear of retaliation and
10 permanent damage to their careers at subsequent employment.

11 25. The prosecution of separate actions by the individual class members, even if possible,
12 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
13 Class members against the Defendant and which would establish potentially incompatible standards of
14 conduct for the Defendant, and/or (b) adjudications with respect to individual Class members which
15 would, as a practical matter, be dispositive of the interest of the other Class members not parties to the
16 adjudications or which would substantially impair or impede the ability of the Class members to protect
17 their interests. Further, the claims of the individual members of the Class are not sufficiently large to
18 warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

19 26. Such a pattern, practice and uniform administration of corporate policy regarding illegal
20 employee compensation described herein is unlawful and creates an entitlement to recovery by the
21 Plaintiff and the Class identified herein, in a civil action, for unpaid overtime, unpaid regular wages,
22 including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit according to
23 the mandate of California Labor Code §§ 201-204, 226, 226.7, 510, 1194, 1197, 1197.1, the applicable
24 IWC Wage Orders and Code of Civil Procedure § 1021.5.

25 27. Proof of a common business practice or factual pattern, which the named Plaintiff
26 experienced and is representative of, will establish the right of each of the members of the Class to
27 recovery on the causes of action alleged herein.

28 28. The Class is commonly entitled to a specific fund with respect to the compensation

1 illegally and unfairly retained by Defendant. The Class is commonly entitled to restitution of those
2 funds being improperly withheld by Defendant. This action is brought for the benefit of the entire class
3 and will result in the creation of a common fund.

4 **FIRST CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE §§ 510, 1194, and 1197.1**

6 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

7 29. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 28 as though fully
8 set for herein.

9 30. This cause of action is brought pursuant to Labor Code §§ 510, 1194, and 1197.1, which
10 require an employer to pay employees regular wages and/or overtime wages for all time spent working
11 for Defendants.

12 31. As a pattern and practice, Defendant suffered and permitted employees to work without
13 payment of regular and overtime wages. For example, Defendant failed to pay applicable regular and/or
14 overtime wages for time spent by employees driving the cars to the garage and preparing their tools
15 prior to clocking in for work. Defendants had a uniform corporate pattern and practice and procedure
16 regarding the above practices in violation of Labor Code §§ 510 and 1194.

17 32. Such a pattern, practice and uniform administration of corporate policy regarding illegal
18 employee compensation as described herein is unlawful and creates an entitlement to recovery by
19 Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of damages owed,
20 including interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate of
21 California Labor Code §§ 510, 1194, and 1197.1.

22 33. Plaintiff is informed and believes, and based thereon allege, that Defendants' willful
23 failure to provide all overtime wages due and owing Plaintiff and Class Members upon separation from
24 employment results in a continued payment of wages up to thirty (30) days from the time the wages
25 were due. Therefore, Plaintiff and other members of the Class who have separated from employment
26 are entitled to compensation pursuant to Labor Code § 203.

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(AGAINST ALL DEFENDANTS BY ALL PLAINTIFF AND THE MEAL BREAK CLASS)

35. Defendant failed in its affirmative obligation to ensure that Plaintiff and Class Members had the opportunities to take and were provided with 30-minute meal periods in accordance with the mandates of the California Labor Code and the applicable IWC Wage Order. Specifically, Plaintiff and Class Members were routinely provided with meal breaks after the 5th hour of work.

37. Whenever Plaintiff and the Class worked a shift and was not provided with a proper meal break within first 5 hours, they were not paid an extra hour of pay.

38. Defendant, as a matter of corporate policy and procedure, regularly failed to pay such premium compensation for each non-compliant meal period Plaintiff and the Class.

(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)

40. Defendant failed in its affirmative obligation to provide accurate itemized wage statements. Defendant, as a matter of policy and practice, did not provide accurate records in violation of Labor Code § 226 by failing to provide accurate payroll records for Plaintiff and the Class.

41. Here, regular and overtime wages and meal period premiums, the wage statements issued to Plaintiff and the Class failed to show the accurate applicable hours worked, total hours worked, and gross and net wages earned.

42. Such a pattern, practice and uniform administration of corporate policy as described

herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code § 226.

FOURTH CAUSE OF ACTION

**FOR VIOLATIONS OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.*
(AGAINST ALL DEFENDANTS BY PLAINTIFF AND THE CLASS)**

43. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 42 as though fully set for herein.

44. Defendants, and each of them, have engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing and utilizing the employment practices outlined above, include, to wit, by: (a) failing to pay regular overtime for all hours worked, including without limitation, time that class members spent prior to clocking in for their shift in violation of Labor Code §§ 510, 1194, and 1197.1; (b) failing to pay an additional hour of pay for meal breaks that were not provided within the first 5 hours of work; and (c) engaging in Unfair Business Practices in violation of the UCL, all in violation of the California Labor Code and applicable IWC Wage Orders.

45. Defendants' utilization of such unfair and unlawful business practices constitutes unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

46. Plaintiff seeks, individually and on behalf of other members of the Class similarly situated, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair practices complained of herein.

47. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set forth herein above thereby depriving Plaintiff and other members of the Class the regular working condition standards and conditions due to them under the California laws and the applicable IWC Wage Orders as specifically described therein.

FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 2698, *ET SEQ.*
(BY PLAINTIFF AS PROXY FOR STATE OF CALIFORNIA
AGAINST ALL DEFENDANTS)

48. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 47 as though fully set forth herein.

49. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees for both Defendants' violations of Labor Code §§201-204, 226, 226.7, 510, 558, 1194, 1197 and 1197.1.

50. Plaintiff alleges that Defendant violated Labor Code §§ 201-204, 510, 558, 1194, 1197 and 1197.1 by failing to pay Plaintiff and other non-exempt employees minimum, regular and overtime wages for any time spent prior to clocking in for work. More specifically, Plaintiff and other aggrieved employees were required to drive the first car that we were servicing to our work area before we clocked in for work. Further, Plaintiff and other aggrieved employees were required to wear our uniforms prior to clocking in for work.

51. Plaintiff further alleges that Defendant violated Labor Code §§ 201-203, and 226.7 by failing to pay Plaintiff and other employees their meal period premiums for late meal breaks. Specifically, Plaintiff and other aggrieved employees were routinely provided with their meal breaks after our 5th hour of work. Labor Code § 226.7(c) states that "the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided." Whenever Plaintiff and aggrieved employees worked the shift and was not provided with a proper meal break within first 5 hours, they were not paid an extra hour of pay.

52. Plaintiff further alleges that Defendant violated Labor Code §226(a) by not providing accurate, itemized wage statements to Plaintiff and other non-exempt employees. Specifically, based on the Defendant's failure to pay minimum, regular and overtime wages and meal period premiums, the wage statements issued to other aggrieved employees and Plaintiff failed to show the accurate applicable hours worked, total hours worked, and gross and net wages earned.

53. On or about September 17, 2020, Plaintiff sent written notice to the California Labor & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§201-203, 226 and 246, pursuant to Labor Code § 2698, *et seq.*, the Private Attorney General Act ("PAGA").

54. As of the date of this filing, the LWDA has not provided written notice regarding whether it intends to investigate the Labor Code violations set forth in Plaintiff's written notice.

55. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants' violation of Labor Code §§201-204, 226, 226.7, 510, 558, 1194, 1197 and 1197.1, from April 6, 2019 to the present, as a proxy for the State of California and on behalf of other Aggrieved Employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as an individual and on behalf of all others that this suit is brought against Defendants, jointly and severally, as follows:

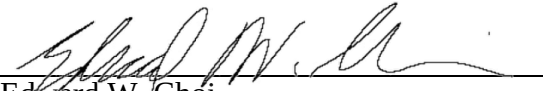
1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representatives of the Class as described herein;
3. For an order appointing counsel for Plaintiff as Class counsel;
4. Upon the First Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-204, 510, 1194, and 1197.1, and for costs and attorneys' fees;
5. Upon the Second Cause of Action, for damages or penalties pursuant to statute as set forth in California Labor Code § 226.7;
6. Upon the Third Cause of Action, for damages and/or penalties pursuant to statute as set forth in California Labor Code §226, and for costs and attorneys' fees;
7. Upon the Fourth Cause of Action, for restitution to Plaintiff and other similarly effected members of the general public of all funds unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200, *et seq.*, for the time periods described above;
8. Upon the Fifth Cause of Action for penalties pursuant to Labor Code §§226.3 and 2698, *et seq.*;
9. On all causes of action, for attorneys' fees and costs as provided by California Labor

Code §§ 218.5, 226, 510, 1194, 1197.1, 2699 and Code of Civil Procedure § 1021.5; and

10. For such other and further relief as the Court may deem just and proper.

DATED: September 28, 2020

LAW OFFICES OF CHOI & ASSOCIATES, P.C.

By: 
Edward W. Choi
Attorneys for PLAINTIFF and the CLASS